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In re Application of	:	
BOTHE, et al.	:	DECISION ON
Application No.: 09/180,699	:	
PCT No.: PCT/EP97/00689	:	PETITION UNDER
Int. Filing Date: 13 February 1997	:	
Priority Date: 15 May 1996	:	37 CFR 1.181, 37 CFR 1.137(a)
Attorney Docket No.: 81992	:	
For: PROTECTIVE DEVICE FOR AN	:	AND 37 CFR 1.137(b)
ELECTRONIC CIRCUIT	:	

This decision is in response to applicant's "(A) Petition to Withdraw Holding of Abandonment, (B) Alternative Petition Under 37 CFR 1.137(a) For Revival Unavoidably Abandoned Application, And, Further (C) Alternative Petition Under 37 CFR 1.137(b) For Revival of Unintentionally Abandoned Application" filed on 07 January 2002 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 13 February 1997, applicant filed international application PCT/EP97/00689, which claimed priority of an earlier application filed 15 May 1996. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 20 November 1997. A Demand for international preliminary examination, in which the United States was elected, was filed on prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 15 November 1998.

On 13 November 1998, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a translation of the international application into English; a First Preliminary Amendment and an unsigned combined declaration and power of attorney.

On 29 March 1999, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905); NOTIFICATION OF DEFECTIVE declaration (Form PCT/DO/EO/917) and NOTICE OF DEFECTIVE TRANSLATION (Form PCT/DO/EO/913) informing applicant of the need to provide a signed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date and a translation

of the International Application into English. Applicant was provided two months to file the proper response and advised that this time could be extended pursuant to 37 CFR 1.136(a). In addition, applicant was advised of the need to provide payment of the \$130.00 processing fee for providing an English translation of the International Application later than thirty months from the priority date and the \$130.00 surcharge for providing an oath or declaration of the inventors later than thirty months from the priority date.

15 February 2000, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) informing applicant that applicant had failed to respond to the NOTIFICATION OF MISSING REQUIREMENTS (Form PCT/DO/EO/905) mailed 29 March 1999 within the time period set therein and that above-identified application was abandoned as to the United States.

On 07 November 2001, applicant filed a status inquiry as to the present application.

On 21 November 2001, applicant was mailed a communication informing applicant that the present application was abandoned as to the United States and forwarding applicant copies of the PCT/DO/EO forms previously mailed 29 March 1999 and 15 February 2000 respectively.

On 07 January 2002, applicant responded with the present petitions accompanied by an executed combined declaration and power of attorney; a copies of various return postcards; a corrected English translation of the international application and an English translation of "Amended Claims" 1-9 of the international application.

DISCUSSION

A. Petition Under 37 CFR 1.181

A review of the "Transmittal Letter to The United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371 filed 13 November 1998, instructs the DO/EO/US to send all correspondence to:

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the transmittal letter is executed by counsel of the same name. Thus, it is clear that the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905); NOTIFICATION OF DEFECTIVE DECLARATION (Form PCT/DO/EO/917) and NOTICE OF DEFECTIVE TRANSLATION (Form PCT/DO/EO/913) mailed 29 March 1999 was properly mailed to the designated correspondence address.

The Official Gazette, at 1156 OG 53, provides that a petition requesting relief based on

the grounds that an Office action was not received must be accompanied by a statement that (1) the Office action was not received, (2) attests that a search of the file jacket indicates the Office action was not received, (3) attests that a search of counsel's docket records indicates the Office action was not received and (4) the Petition must also be accompanied by copies of the docket records where the non-received Office action would have been entered. (See also, Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971). Applicant's present filing satisfies items (1), (3) and (4).

As to item (2), while applicant has provided a declaration of Michele A. Simone indicating that she examined the back-up copies of the first pages of the Office Actions kept by her and did not find any Notification of Missing Requirements for the present case, this is not sufficient. Applicant must attest that a search of the file jacket indicates that the Office action was not received.

For the reason indicated above, it is not proper to grant applicant's petition at this time.

In light of the above, applicant's petition under 37 CFR 1.181 is dismissed.

B. Petition Under 37 CFR 1.137(a)

Under 37 CFR 1.137(a), a petition requesting that the application be revived on the grounds of unavoidable delay must be filed promptly after applicant becomes aware of the abandonment, and such petition must be accompanied by: (1) A proper response, unless already filed; (2) The petition fee as set forth in §1.17(l); (3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) A terminal disclaimer (if necessary).

With regard to Item (1), the proper response was the filing of a properly executed oath of declaration of the inventors, a compliant translation of the international application into English, as well as, payment of the fees detailed in the Form PCT/DO/EO/905. Applicant has presently filed a proper response.

As to Item (2), applicant has authorized the deduction of the \$110.00 petition fee from Deposit Account No. 20-1430.

With regard to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

As to Item (3), applicant has not provided sufficient evidence to show that the failure to respond to the Form PCT/DO/EO/US/905 in a timely manner was the result of an unavoidable delay. Applicant merely states that the delay was unavoidably caused by non-receipt of the form mailed 29 March 1999. However, as discussed above, applicant has not shown that the decision

was in fact not received.

Applicant's petition under 37 CFR 1.137(a) is dismissed.

C. Petition Under 37 CFR 1.137(b)

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

With regard to Item (1), the proper response was the filing of a properly executed oath of declaration of the inventors, a compliant translation of the international application into English, as well as, payment of the fees detailed in the Form PCT/DO/EO/905. As discussed above, applicant has presently filed a proper response.

As to Item (2), applicant has authorized the deduction of the \$1240.00 petition fee from Deposit Account No. 20-1430.

With regard to Item (3), applicant's statement that, "the entire delay in filing the required reply from the due date for filing the reply until the filing of this petition was unintentional." satisfies the requirement of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate. Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have been satisfied.

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CONCLUSION

Applicant's petition under 37 CFR 1.181 is **DISMISSED**.

Applicant's petition under 37 CFR 1.137(a) is **DISMISSED**.

Applicant's petition under 37 CFR 1.137(b) is **GRANTED**.

As authorized, \$1610.00 will be deducted from Deposit Account No. 20-1430 (\$110.00 as payment of the petition fee for a petition under 37 CFR 1.137(a); \$1240.00 as payment of the

petition fee for a petition under 37 CFR 1.137(b); \$130.00 as payment of the surcharge for filing an executed oath or declaration of the inventors later than thirty months from the priority date and \$130.00 as payment of the processing fee for providing an English translation of the international application later than thirty months from the priority date.)

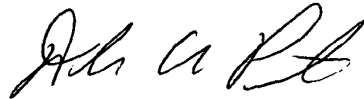
In addition, it is noted that a review of the fee history shows for the present application shows that the \$930.00 payment of the U.S. Basic National Fee was never charged to Deposit Account 20-1430 as authorized, as such, that fee will be presently charged.

This application will be given an international application filing date of **13 February 1997** and a date of **07 January 2002** under 35 U.S.C. 371.

This application is being returned to the DO/EO/US for processing in accordance with this decision.



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REPLACED BY
ART 34 AMDT

WHAT IS CLAIMED IS:

1 1. Apparatus for protecting electric circuitry
2 and/or an electric consumer against damage from excessive
3 electric energy comprising an element (8) incorporated in a
4 current supply path for preventing an externally supplied
5 excess voltage from generating an excessive flow of energy
6 over a pre-established time interval, and means responsive to
7 heat generated by the flow of excessive energy for permanently
8 interrupting the current supply path.

1 2. Apparatus according to claim 1 including a
2 circuit board forming an electric current path and a pair of
3 solder surfaces at at least one point along the path, a first
4 one of the solder surfaces being connectable with a power
5 supply, and a second one of the solder surfaces being
6 connectable with a current user, the protective element
7 electrically connecting the two solder surfaces of the pair.

1 3. Apparatus according to claim 1 or 2 including a
2 mechanically prestressed spring engaging the element (8) and
3 reliably separating it from the solder surface pairs (6, 6';
4 7, 7') when the solder becomes sufficiently heated.

1 4. Apparatus according to claim 3 wherein the
2 spring comprises a leaf spring (11) which has at least one
3 shoulder extending through a slot (13) in the circuit plate
4 (1) and pressing against the element (8).

1 5. Apparatus according to claim 4 wherein one end
2 of the leaf spring (11) extends through an edge cutout (14) in
3 the circuit plate and has a lateral protrusion engaging the
4 circuit plate (1), and wherein another end of the leaf spring
5 forms a locking hook (16) extending through an opening (17) in
6 the circuit plate (1).

1 6. Apparatus according to one of claims 1 to 5,
2 wherein the current paths include solder surfaces (4, 4'; 5,

3 5') for connection to conductors supplying electric power and
4 solder surfaces (6, 6'; 7, 7') for the element arranged side
5 by side and beneath connection points (9, 10) of the element.

1 7. Apparatus according to one of claims 1 to 6
2 including a solder for attaching the element (8), the solder
3 having a predetermined melting point chosen as a function of a
4 predetermined, permissible maximum temperature.

1 8. Apparatus according to one or more of claims 1
2 to 7 wherein the element (8) comprises a suppressor diode
3 which sets a predetermined voltage value.

1 9. Apparatus according to one or more of claims 1
2 to 8 wherein the current consumer comprises a storage battery.

1 10. Apparatus according to claim 9 including a
2 housing, and wherein the element and the storage battery are
3 arranged in the housing.

1 11. Apparatus according to one of claims 9 and 10
2 wherein the storage battery comprises at least one Li-Ion-
3 cell.

Geänderte Patentansprüche

1. Vorrichtung zum Schutz einer elektronischen Schaltung und/oder eines nachgeschalteten Verbrauchers gegen Zuführung unzulässig hoher elektrischer Energie, bestehend aus einem die Spannung begrenzenden Bauelement,
5 dessen Anschlußteile über Lötflächen mit den beiden Strompfaden des Verbrauchers verbunden sind und das durch eine Feder unter mechanischer Vorspannung gehalten und im Falle des Auslötens von der Lötfläche abgehoben und von den Strompfaden getrennt wird, dadurch gekennzeichnet, daß auf einer Leitplatte (1) für zwei
10 Strompfade je eine Leiterbahn (2,2' bzw. 3,3') vorgesehen ist, die durch Lötflächenpärchen (6,6' bzw. 7,7') unterbrochen sind, von denen jeweils die eine Lötfläche an die Stromquelle und die andere an den
15 Verbraucher angeschlossen ist und daß die Anschlußteile (9,10) des Bauelements (8) mit den Lötflächenpärchen (6,6' bzw. 7,7') verlötet sind.
2. Vorrichtung nach Anspruche 1, dadurch gekennzeichnet,
20 daß die Leiterbahnen (2,2' bzw. 3,3') mit Lötflächen (4,4';5,5') für die Anschlüsse der Strompfade versehen sind und die Lötflächen (6,6';7,7') für das Bauelement (8) nebeneinander unter den Anschlußteilen (9,10) des Bauelementes (8) liegen.
- 25 3. Vorrichtung nach einem der Ansprüche 1 bis 6, dadurch gekennzeichnet, daß zum Löten des Bauelementes (8) ein Lot mit definiertem Schmelzpunkt in Abhängigkeit von der festgelegten zulässigen Aufheiztemperatur gewählt
30 wird.

4. Vorrichtung nach einem der Ansprüche 1 bis 3, gekennzeichnet durch eine Blattfeder (11) , die mit wenigstens einer durch einen Schlitz (13) in die Leiterplatte (1) ragenden Schulter (12) gegen das Bauelement (8) drückt.
5. Vorrichtung nach einem der Ansprüche 1 bis 4, dadurch gekennzeichnet, daß die Blattfeder (11) an einem Ende in einem Randausschnitt (14) und mit seitlichen Schenkeln auf der Leiterplatte (1) liegt und daß am anderen Ende eine in eine Öffnung (17) der Leiterplatte (1) eingreifende Hakensperre (16) vorgesehen ist.
6. Vorrichtung nach einem der Ansprüche 1 bis 5, dadurch gekennzeichnet, daß das Bauelement (8) eine Suppressor-Diode ist, die den definierten Spannungswert festlegt.
7. Vorrichtung nach einem der Ansprüche 1 bis 6, dadurch gekennzeichnet, daß der Verbraucher ein Akkumulator ist.
8. Vorrichtung nach Anspruch 7, dadurch gekennzeichnet, daß das Schutzelement zusammen mit dem Akkumulator in einem Gehäuse untergebracht ist.
9. Vorrichtung nach Anspruch 7 oder 8, dadurch gekennzeichnet, daß der Akkumulator aus wenigstens einer Li-Ion-Zelle besteht.